

BOARD OF APPEALS
for
MONTGOMERY COUNTY, MARYLAND

Stella B. Werner Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Cases No. S-689-C & CBA-2590-A

PETITION OF KENWOOD GOLF AND COUNTRY CLUB

(Hearing held December 12, 2000)

(Effective Date of Opinion: January 24, 2001)

Cases No. S-689-C and CBA-2590-A are petitions filed pursuant to Section 59-G-1.3(c)(2) of the Montgomery County Zoning Ordinance requesting modifications of the existing special exceptions to permit the replacement of the 230-foot radio tower currently standing on the property with one of similar style and same height. Case No. S-689-C is a petition to modify the special exception for the golf and country club as a whole, of which the radio tower is a part. Case No. CBA-2590-A is a petition to modify the special exception for the telecommunications tower, itself.

Pursuant to Section 59-A-4.41 of the Zoning Ordinance, the Board of Appeals ("Board") held a hearing at 10:30 a.m. on December 12, 2000. Harry Lerch, Esq. and James Moorehead, Esq. appeared on behalf of the Petitioner. They called as witnesses Officer Bruce Blair (Montgomery County Police Department); Lieutenant Dallas Lipp (Montgomery County Department of Fire and Rescue Services); Mr. Ashby L. Chamberlin (President, Kenwood Golf and Country Club); Mr. Kip White (Director of Municipal Business Development, American Tower); Mr. Walter J. Petzold (Civil Engineer/Land Planner, Oyster, Imus & Petzold Inc.); and Mr. David S. Weber (Civil Engineer, Gutschick, Little & Weber, PA). There was no testimony presented in opposition to the subject modification request.

Decision of the Board: Special Exception Modifications **Granted**,
subject to conditions enumerated below.

FINDINGS OF FACT

1. The subject property is Part of Parcel 1, Kenwood, Section 2, in the Bradley Hills Subdivision in the R-90 zone.

2. The Kenwood Golf and Country Club (the "Club") was established in 1928 and has been in continuous operation since that time. The Club is located on approximately 102 acres at 5601 River Road, Bethesda, Maryland. The Club is divided into two portions by Goldsboro Road. The Club's property is currently developed with an 18-hole golf course, a pro shop, two large pools and a wading pool, 16 outdoor tennis

courts, a tennis building with four indoor courts, a club house, and a 45-room guesthouse.

3. The clubhouse buildings and tennis courts are clustered in the southeastern corner of the property with the golf course occupying the rest of the property. There are mature trees along the property lines and throughout the golf course. The main vehicular access to the Club is off River Road, approximately 600 feet west of Dorset Avenue.

4. The existing radio tower stands in the northeastern corner of the Club's property, approximately 300 feet from the eastern property line at Radnor Road. The subject property slopes downward from west to east. There are mature trees standing along the property lines and clustered around the radio tower, itself. There is a service road onto the Club's property off of Goldsboro Road, approximately 800 feet west of Radnor Road. The service road accesses the Club's maintenance facility, the radio tower, and the equipment shelter for the radio tower.

5. The history of the radio tower is as follows:

(a) On October 10, 1946, the Montgomery County Board of Zoning Appeals, in Case No. 581, approved the placement of a radio tower on Kenwood's property. The radio tower structure was originally constructed and managed by Broadcast Management, Inc. The sole use of the tower was to broadcast the radio signal of WBCC.

(b) The radio tower eventually began broadcasting the radio signal of WUST, which was owned by the Atlantic Broadcasting Company ("ABC") beginning in 1958. A reference to a 1966 lease and a copy of a 1971 lease by and between Kenwood and ABC both reflect that ABC had taken over control of the radio tower.

(c) In 1969, ABC, as Petitioner in Case No. 2590, gained approval by the Board for a 60-foot pole extension to the existing tower.

(d) In March, 1973, SJR Communications, Inc. ("SJR") entered into a lease with Kenwood whereby SJR leased the land for the tower and was responsible for the operation and maintenance of the tower.

(e) On March 1, 1978, Kenwood and WJMD, a subsidiary corporation owned entirely by SJR, entered into a lease. In 1980, WJMD assigned the March 1, 1978, lease to Towco Corp. ("Towco"), a New Jersey corporation.

(f) In January, 1985, Towco assigned its rights under the March 1, 1978, lease to Gulf Broadcast Group, Inc. ("Gulf"), the owner and operator of Station WLTT in Bethesda, Maryland.

(g) In July, 1985, Gulf transferred its rights to the radio tower and Station WLTT to CBS Inc.

(h) In June, 1998, CBS Inc. transferred its rights to the radio tower to its subsidiary, Infinity Broadcasting Corporation, a Delaware corporation.

6. Infinity Broadcasting Corporation, the successor in interest to and subsidiary of CBS Inc. and the holder of the special exception under CBA-2590, has transferred its right, title, and interest in and to the special exception to the Club.

7. The Club requests permission to modify the approved Special Exception S-689 for a golf and country club and Special Exception CBA-2590 for the radio tower, to replace the existing radio tower currently standing in the northeast area of the Club's property with a radio tower of the same height. In addition, the modification will include a new 12' x 27' equipment shelter, propane tank, generator pad, and fencing. The existing service road leading from Goldsboro Road to the tower will not be changed.

8. The request to replace the radio tower with one of the same height and size is at the request of the Montgomery County Departments of Police and Fire and Rescue Services for co-location on the proposed new radio tower.

9. Maryland National Capital Park & Planning Commission staff reviewed the application and issued a Memorandum on December 5, 2000, recommending approval, with conditions [Exhibit No. 19 in S-689-C; Exhibit No. 20 in CBA-2590-A].

10. On December 6, 2000, the Montgomery County Telecommunications Transmission Facility Coordinating Group ("Tower Committee") reviewed the Kenwood Country Club request to replace its radio tower, and with a unanimous vote (3-0, 4 abstaining because of County employment), the Tower Committee approved the replacement.

11. On October 19, 2000, the Montgomery County Planning Board reviewed Mandatory Referral Application No. 00305-DIST-1, regarding the construction of the replacement tower at Kenwood Country Club. The Planning Board had no particular concerns about the proposal and recommended that the mandatory referral application be approved.

12. No one testified in opposition to the Club's proposed modification [Exhibit 2].

CONCLUSIONS OF LAW

General Conditions

Sec. 59-G-1.2. Conditions for granting.

59-G-1.2.1. Standard for evaluation.

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use and adverse effects created by unusual characteristics of the site.

The inherent adverse effects of a transmission tower would include height, visibility and lighting. These effects are no different here than at any other location in the R-90 zone. The inherent adverse effects are less in this location because of the relatively substantial distances from Club boundaries, the substantial number of mature trees surrounding the tower trees and on the golf course, and most importantly, the fact that the existing tower has been in place since 1947, and is a familiar sight to all of its neighbors.

59-G-1.21. General conditions.

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

The use is allowed under Section 59-C-1.31 of the Zoning Ordinance. The property is in the R-90 zone, and the tower and support structures are permissible special exceptions in the zone. [Exhibit 13, zoning map]. The table in section 59-C-1.31 of the Zoning Ordinance shows “Public utility buildings, public utility structures and telecommunications facilities” and “radio and television broadcasting stations and towers” as permissible special exceptions in the R-90 zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The tower and support structures are permissible special exceptions in the zone. As noted below, the use will be in compliance with the standards and requirements set forth in 59-G-2.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The subject property is covered by the Bethesda–Chevy Chase Master Plan. The Master Plan supports the existing R-90 Zone for the subject property, and telecommunication facilities are allowed by special exception in that zone. The replacement tower and support building will be consistent with the general plan for the physical development of the District, including the Bethesda-Chevy Chase Master Plan [Exhibit 8, Exhibit 10] adopted by the Commission. The planning staff, in its report, has found compatibility with the Master Plan and recommended approval of this application.

(4) Will be in harmony with the general character of the neighborhood considering population density, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The use will be in harmony with the general character of the neighborhood when considering this criteria. The new tower will have less of a visual impact than the existing structure because of its triangular design, neutral finish, and location. Since the existing tower and support building have existed in harmony with the neighborhood since 1947, the replacement tower and support building will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The replacement tower and support building will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed modifications will not cause adverse effects with respect to any of these criteria. Towers of this kind are essentially passive in nature. The replacement tower and support building will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone. In addition, the new tower will utilize a combination of white strobe lights during the daytime and red lights at night, which is considered more compatible than the flashing red lights on the existing tower.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominately residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The proposed modifications will not increase the number, intensity, and scope of the approved special exceptions in the area. Since it is a replacement of the existing tower, the replacement tower and support building will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. In addition, by encouraging co-location of several users, the reconstructed tower will reduce the proliferation of special exception uses.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed modifications will not cause any of these effects. The new tower will enable the Montgomery County Police and Department of Fire and Rescue to co-locate their radio equipment. This satisfies an urgent need in the Bethesda area for life safety communications. In addition, because the tower and secured support are essentially passive in nature, and totally within the fenced country club golf course, they will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

The replacement tower and support building will be served by adequate public services and facilities. They have no effect on schools and do not require water or sanitary sewer. Other public facilities, such as police and fire protection, public roads, storm drainage are more than adequate. In fact, the tower and support building are designed to enhance the level of police, fire and rescue service. Minimal, if any, grading will be required.

(i) *of subdivision the adequacy of public facilities must be determined. If the special exception use requires approval of a preliminary plan by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The replacement tower and support building will be located on an existing subdivision lot and will not require approval of a new preliminary plan.

(ii) *With regard to findings relating to public roads, the Board, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The replacement tower and support building will generate negligible traffic and will have no effect on vehicular or pedestrian safety.

59-G-1.22. Additional Requirements.

(b) *Pursuant to guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with the provisions of Division 59-D-3, "Site Plan," if:*

- (1) *The property is in a zone requiring site plan approval or*
- (2) *The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors.*

No site plan is required by the zone or indicated as necessary by the Planning Board.

59-G-1.23. General Development Standards.

(c) *Area, frontage and setback requirements. Whenever in division 59-G-2 no specific area, frontage and setback requirements are specified, then the area, frontage and setback requirements in the applicable zone shall apply; provided, that in the*

following special exception cases the board shall be authorized to waive the requirement for a minimum frontage at the street line if it finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:

(5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations.

The lot has approximately 364 feet of frontage on Radnor Road, and substantially exceeds the frontage requirements of the R-90 zone, which requires 25 feet at the street and 75 feet at the building line; therefore no waiver of the frontage requirements under section 59-G-1.23 is necessary by the Board [Exhibit 12(b), Exhibit 5(a)].

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that is in conflict with the preliminary forest conservation plan.

A forest conservation plan waiver has been granted and has been filed as an exhibit in the file [Exhibit 9, Exhibit 7].

(e) Should a special exception application, approved by the Board, be inconsistent with the approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that is determined by the Planning Board and department to be consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department determine that the required revisions can be evaluated as part of the final water quality plan review.

The special exception application is not within a special protection area, and therefore not subject to the submission of a water quality plan. The provision of 59-G-1.23 requiring consistency with any approved preliminary water quality plan is inapplicable.

(f) Signs. The display of a sign must comply with the requirements established in Article 59-F of this chapter.

The only anticipated signs would be those dealing with safety as required by the FCC or the County. Any signs will comply will comply with Article 59-F.

59-G-1.26. Exterior appearance in residential zones. Structures to be constructed, reconstructed or altered pursuant to special exceptions in residential zones must,

whenever practicable, have the exterior appearance of residential buildings of the type otherwise permitted and must have suitable landscaping, screen planting and fencing wherever deemed necessary by the board.

The existing and proposed support structures, to the degree practicable, will have the exterior appearance of buildings of the type otherwise permitted in residential zones. The entire compound will be enclosed by a security fence as is presently the case. The equipment buildings and compound are out of sight of surrounding residences, and Kenwood's golf maintenance staff will provide and maintain suitable landscaping, screen planting and fencing [Exhibit 6(a)-(c)].

Specific Conditions

Section 59-G-2.43. Public utility buildings, public utility structures, and telecommunication facilities.

(a) A public utility building or public utility structure, not otherwise permitted may be allowed by special exception. The findings of this subsection (a) do not apply to electric power by transmission or distribution lines carrying in excess of 69,000 volts, which are regulated by subsection (f) below. For other buildings or structures regulated by this section, the Board must make the following findings:

(1) The proposed building or structure at the location selected is necessary for public convenience and service.

As a part of this program, the Montgomery County Department of Information Systems and Telecommunications, as well as the Police Department, and Department of Fire and Rescue Services have determined that the proposed building or structure at the location selected is necessary for public safety, as well as public convenience and service.

The County's Police Department, and Department of Fire and Rescue Services approached the Club and asked if they could install their new equipment on the existing tower. The Club agreed to this, but the existing tower was determined to not be strong enough for the new equipment. Therefore, it is necessary to replace the existing tower with a stronger reconstructed tower of the same height.

Were it not for the County's needs, the existing tower would remain in place. The useful life of the existing tower, as it is presently used and maintained, would still be many years. In addition to the police, fire and rescue needs, the replacement tower will co-locate the FM radio station currently on the existing tower and other telecommunications servers.

(2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

The replacement tower and support building will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties. The support building is very unobtrusive, and will not be visible from surrounding properties. It is a sand-colored, rectangular building, with dimensions of 12' x 27'. It is similar in size and scale as a single-car garage or storage shed and is the same support building used by the county in other locations where a new support building is necessary.

(b) Public utility buildings in any permitted residential zone, shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board.

The existing and proposed support structures, to the degree practicable, will have the exterior appearance of buildings of the type otherwise permitted in residential zones. The entire compound will be enclosed by a security fence as is presently the case. The buildings and compound will have whatever suitable landscaping, screen planting and fencing is deemed appropriate or necessary by the Board.

The buildings conform to the coverage and setback regulations of the R-90 zone; and all facilities are located to conform to other special exception standards. The support structure will be out of sight of surrounding residences, but if any landscaping is deemed to be required, the Club's grounds keepers can easily address it.

(c) Reserved.

(d) Any proposed broadcasting tower shall have a setback of one foot from all property lines for every foot of height in the tower; provided, that any broadcasting tower lawfully existing on September 1, 1970, shall be exempted from the setback limitations imposed by this subsection, and may be continued, structurally altered, reconstructed or enlarged; provided further, that no structural change, repair, addition, alteration or reconstruction shall result in increasing the height of such tower above the then existing structurally designed height.

The proposed tower will not maintain the required 1:1 setback (230 feet) from all property lines. The minimum setback proposed is 190 feet. However, since the tower was lawfully existing on September 1, 1970, it is exempt from the height and setback limitations imposed by Sec. 59-G-2.43 (d), and the tower may be reconstructed provided that the reconstruction does not result in increasing the height of the tower over the existing structurally designed height. The reconstructed tower is proposed to be the same height as the existing tower, so it clearly falls under this exemption. In its report, the Planning Board staff agreed with this conclusion [Exhibit 12(b), Exhibit 5(a)].

(e) *Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for the occupancy, use, support or housing of switching equipment, regulators, stationary transformers and other such devices for supplying electric service; telephone offices; railroad bus, trolley, air and boat passengers stations; radio or television transmitter towers and stations; telecommunication facilities; above ground pipelines. Additional standards for telecommunication facilities are found in subsection (j).*

The proposed tower and accessory buildings are consistent with this statement.

(f) *The provisions of section 59-G-1.21(a) shall not apply to this subsection. In any residential zone, overhead electrical power and energy transmission and distribution lines carrying in excess of 69,000 volts.*

Not applicable.

(g) *In addition to the authority granted by section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it may deem necessary to protect the public health, safety or general welfare.*

Recommended conditions of approval are noted below.

(h) *Petitions for special exception under this section may be filed on a project basis.*

Not applicable.

(i) *A petitioner under this section shall be considered an interested person for purposes of filing a request for a special exception if he states in writing under oath that he has made a bona fide effort to obtain a contractual interest in the subject property for a valid consideration without success, and that he intends to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted.*

(j) *Any telecommunication facility must satisfy the following standards:*

(1) *The minimum parcel or lot area must be sufficient to accommodate the location requirements for the support structure under paragraph (2), excluding the antenna(s), but not less than the lot area required in that zone. The location requirement is measured from the base of the support structure to the property line. The Board of Appeals may reduce the location requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates a support structure can be located on the property in a less visually unobtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any and visibility from the street.*

The parcel or lot area is sufficient to accommodate the location requirements for the support structure under paragraph (2), excluding the antenna(s), but not less than the lot area required in the zone. The R-90 zone requires lot area of 9,000 square feet. Lot 4, Block 13, Bradley Hills subdivision contains approximately 197,600 square feet, which is more than 4.5 acres.

The support building will be set back 160 feet from the north property line, which is far more than one foot from property line for every foot of height of the support structure. The minimum lot size in the R-90 Zone is 9,000 square feet. The subject property is comprised of 102 acres of land. The new tower will maintain a minimum setback of 190 feet from the nearest property line, 20 feet closer than the existing structure will replace. The location is less visually unobtrusive given the tower elevation and closer proximity to mature trees on the property, which mitigate the view from adjoining and nearby residences and streets [Exhibit 12(b), Exhibit 5(a)].

(2) *A support structure must be located as follows:*

(a.) *In agricultural and residential zones, a distance of one foot from property line for every foot of height of the support structure.*

The proposed tower will not maintain the required 1:1 setback (230 feet) from all property lines. The minimum setback proposed is 190 feet. However, the tower was lawfully existing on September 1, 1970, and therefore, it is exempt from the height and setback limitations imposed by Sec. 59-G-2.43. (d). The replacement tower may be reconstructed provided that the reconstruction does not result in increasing the height of the tower over the existing structurally designed height. The reconstructed tower is proposed to be the same height as the existing tower, so it clearly falls under this exemption. In their report, the Planning Board staff agreed.

(b.) *In commercial and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.*

Not applicable.

(c.) *These location requirements apply to perimeter lot lines and not to interior lot lines.*

The location requirements applied to the new tower are based on the perimeter property lines.

(3) *A freestanding support structure must be constructed to hold not less than 3 telecommunication carriers. The Board may approve a support structure holding less than 3 telecommunication carriers if: 1) requested by the applicant and a determination*

is made that a collocation at the site is not essential to the public interest; and 2) the board decides that construction of a lower support structure with fewer telecommunication carriers will promote community compatibility.

The new tower will be constructed to hold not less than three telecommunication carriers. CBS Radio, AT&T, and Montgomery County Police and Fire and Rescue will all maintain antennae on the structure, and the tower will be designed to accommodate several additional carriers.

(4) No signs or illumination are permitted in the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

The Federal Aviation Administration will require illumination on the tower since it exceeds a height of 200 feet. No signs or illumination will be installed except as required by the FCC, the FAA or the County. With regard to lighting, the FAA requires either continuously operating red lights on the tower (coupled with a red and white paint scheme) or else a daytime strobe at the top of the tower and nighttime red lights. With the strobe, the tower can remain unpainted. The strobe and unpainted tower, which studies have shown to be the most popular choice with neighboring property owners, will be used on the replacement tower. The lighting will be located, shielded, landscaped or buffered so that no direct light shall constitute an intrusion into any residential area.

(5) Every freestanding support structure must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.

The new tower will replace an existing tower, which will be removed. The Club understands and acknowledges that the support structure must be removed at the cost of the applicant when the building is no longer in use by any telecommunication carrier.

Golf Course Requirements

Sec. 59-G-2.24. Golf courses and country clubs.

The Board may authorize a golf course, country club, upon a finding that the proposed use will not adversely affect surrounding residential and agricultural uses because of noise, traffic, number of people or type of physical activity; provided, that the following standards and requirements can be met:

Sec. 59-G-2.24.

(a) The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed in connection with such use, provided the

availability of such services is not reasonably expected to draw an excessive amount of traffic through local residential streets.

The Club's food, refreshment and entertainment services are not anticipated to change in any way, and they will not change the traffic patterns on local residential streets.

(b) All buildings shall conform to the height, coverage, and setback regulations of the zone in which they are located; and all facilities shall be so located as to conform to other special exception standards.

The proposed tower will not maintain the required 1:1 setback (230 feet) from all property lines. The minimum setback proposed is 190 feet. However, the tower was lawfully existing on September 1, 1970, and therefore, it is exempt from the height and setback limitations imposed by Sec. 59-G-2.43. (d). The replacement tower may be reconstructed provided that the reconstruction does not result in increasing the height of the tower over the existing structurally designed height. The reconstructed tower is proposed to be the same height as the existing tower, so it clearly fall under this exemption.

(c) All outdoor lighting shall be located, shielded, landscaped or otherwise buffered so that no direct light shall constitute an intrusion into any residential area.

The lighting will be located, shielded, landscaped or buffered so that no direct light shall constitute an intrusion into any residential area.

Based upon the foregoing, the Board finds that modification of the existing Special Exceptions can be granted, subject to the following conditions:

1. Petitioner shall be bound by all of its submitted plans, written statements, as modified, exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the special exception modification.
2. All terms and conditions of previously approved Special Exceptions and modifications for the subject development shall remain in full force and effect.

On motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donald H. Spence, Jr., Chairman, Donna L. Barron, and Mindy Pittell Hurwitz in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-titled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 24th day of January, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four month period within which the special exception granted by the Board must be exercised.

PETITION OF KENWOOD COUNTRY CLUB

EXHIBIT LIST

1. (a) Letter from Harry W. Lerch, dated 10-6-00
(b) Petition for special exception
2. List of adjoining/confronting property owners
3. Petitioner's Statement of Operation and Justification
4. (a) Site plan
(b) Reduced site plan – not to scale
5. (a) – (b) Elevations
6. (a) – (c) Photographs
7. County Communications Emergency Network
8. Excerpt from Bethesda-Chevy Chase Planning Area Land Use Master Plan
9. Forest Conservation Plan waiver
10. Existing trees map
11. Geotechnical engineering report
12. (a) Local vicinity map
(b) Site plan and vicinity map
13. Zoning vicinity map
14. Letter to BOA from County Fire and Rescue Service, dated 10-25-00,
re: tower replacement
15. (a) Envelope showing date hearing notice mailed
(b) Notice of hearing scheduled for December 12, 2000
16. Letter to BOA from Stephen Hildebrandt, Infinity Broadcasting Corporation, dated 11-6-00,
re: notification of status as successor and assignee
17. Letter to BOA from Harry Lerch, dated 11-20-00, re: consolidation of cases and filing fee waiver
18. Letter to BOA from Harry Lerch, dated 11-30-00, re: color and lighting of replacement tower
19. _____
20. _____
21. _____
22. _____
23. _____
24. _____

PLEASE NOTE: When Montgomery County Schools are closed due to the weather, Board of Appeals hearings will not be held. When Montgomery County Schools announce a late opening, Board of Appeals hearings will also be delayed. Please call to confirm.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-689-C

PETITION OF KENWOOD GOLF AND COUNTRY CLUB

Please take notice that a public hearing will be held by the Board of Appeals for Montgomery County, Maryland, in advance and out of order pursuant to Section 59-A-4.41 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended), in the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland, Second Floor Davidson Memorial Hearing Room, **on Tuesday, the 12th day of December, 2000, at 10:30 a.m.** or as soon thereafter as this matter can be heard, on the application filed for a modification to a special exception pursuant to Section 59-G-2.43 (Public Utility Buildings, Public Utility Structures and Telecommunications Facilities) of the Zoning Ordinance to permit the rebuilding of an existing radio tower.

This case will be heard in conjunction with CBA-2590-A.

The subject property is Lot 4, Block 13, located at 5601 River Road, Bethesda, Maryland, in the R-90 Zone.

Notices forwarded this 16th day of November, 2000, to:

Kenwood Golf and Country Club
CBS, Inc.
Martin Hutt, Esquire
James Moorhead, Esquire
Charles W. Thompson, Jr., Esquire, County Attorney
Martin Klauber, Esquire, People's Counsel
Zoning Supervisor, Development Review Division, M-NCPPC
Director, Department of Environmental Protection
Director, Department of Permitting Services
Chief, Division of Development Services and Regulation,
Department of Environmental Protection
Director, Department of Public Works and Transportation

State Highway Administration
Fire Marshal
Case No. S-689-C

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Board of Education
Washington Suburban Sanitary Commission
Members, County Board of Appeals
Contiguous and confronting property owners
Wood Acres Citizens Association
Kenwood Citizens Association
Springfield Civic Association
Wickford Community Association
Chevy Chase West Neighborhood Association
Chevy Chase Neighborhood Association
Merrimack Park Citizens Association
Bannockburn Civic Association
Drummond Citizens Association
Massachusetts Avenue Forest Association
Somerset Citizens Association
Kenwood Forest Condominium Association
Bradley House Condominium Association
Four Six Two Zero (4620) North Park
Bethesda Coalition
Spanish Speaking People of Bethesda
Bradley Hills Civic Association
South Bradley Hills Neighborhood
Barrett and Audubon Ad Hoc
Town of Chevy Chase

County Board of Appeals

by: _____
Katherine Freeman
Executive Secretary to the Board